

UNITED STATES BANKRUPTCY COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA  
DURHAM DIVISION

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In Re:

**Robin Wagoner**

Case No. 09-80912

Chapter 13

Social Security No.: xxx-xx-6196

Address: 5509 Old Hillsborough Rd, Durham, NC  
27705

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Debtor

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**MOTION FOR AUTHORITY TO SELL AT  
AUCTION REAL AND PERSONAL PROPERTY  
AND TO EMPLOY AUCTIONEER**

**NOW COMES** the Debtor, by and through the undersigned attorney, pursuant to Sections 1303 and 363 of the Bankruptcy Code, requesting permission to sell at auction both real estate and personal property, and also requesting approval of an attorney fee, and in support thereof, shows unto the Court as follows:

1. Debtor has filed a petition for relief in bankruptcy under Chapter 13 of the United States Code on June 3, 2009.
2. This motion is being made so that the Debtor may sell at private sale the subject real property.
3. The Debtor is the owner of certain real property (hereinafter referred to as "said property") located in Orange County in the State of North Carolina and known as 5509 Old Hillsborough Rd., Durham NC 27705, and more particularly described as follows:

BEGINNING at an iron located North 88' 21' 03" East 1350.12 feet from a nail in the center of the intersection of Old Hillsborough Road (SR 1710) and Hemlock Drive; thence from beginning South 01' 38' 25" East 741.65 feet to an existing nail in the right of way of Southern Railroad; thence with said right of way along the following three calls to an existing iron South 66' 40' 11" West 369.07 feet a curve of 185.60 feet with a radius of 4,526.22 feet and a chord bearing South 67' 50' 40" West a distance of 185.59 feet, and a curve of 609.19 feet with a radius of 1,333.72 feet and a chord bearing South 82' 06' 16" West a distance of 603.91 feet; thence North 02' 29' 30" West 1914.55 feet to an existing iron in the southern edge of Old Hillsborough Road; thence with the southern edge of Old Hillsborough Road North 83' 26' 06" East 134.5 feet to an iron, the point and place of BEGINNING, containing 22.69 acres, more or less, according to an unrecorded survey titled "Final Plat, Property of Marvin William Tillery" by Dale D. Faulkner, RLS, dated May 28, 1996; LESS AND EXCEPT that 2.174 acre tract of land conveyed to North Carolina

Railroad Co. by the deed filed of record in Book 2204, Page 6S, Orange County Registry, and shown on the plat of survey filed of record in Plat Book 87, Page 97, Orange County Registry.

4. Said property is listed on Schedule A attached to the Petition filed in this case.
5. On April 20, 2010, the Debtor entered into a contract to sell said property at auction for a price not less than the amount owed to Sun Trust Bank, the sole lienholder. Attached as Exhibit A is a copy of the Offer to Purchase and Contract.
6. A copy of the Exclusive Right to Sell Listing Agreement with NC Real Auctions, L.L.C, showing projected costs and a 5% commission is attached herewith as Exhibit B.
7. Upon information and belief, as of the date of this motion, the only lien encumbering said property is that held by Sun Trust Bank.
8. Additionally, the Debtor is seeking authority to sell at auction numerous items of personal property. Attached as Exhibit C is a list of the property sought to be sold, which the NC Real Auctions anticipates will generate approximately \$5,500.00 of proceeds.
9. That the Debtor believes the proposed sale to be in the best interest of the Debtor for the following reason(s):
  - a. The Debtor cannot afford to keep the property.
  - b. Selling the property will lower the expenses of the Debtor, thereby promoting the financial rehabilitation of the Debtor.
  - c. The Chapter 13 plan requires the sale of the property.
10. The proposed sale will not affect the ability of the Debtor to successfully complete the Chapter 13 plan.
11. The proposed sale does not adversely affect the interests of the bankruptcy estate.
12. The Debtor intends to retain the net proceeds in an amount not to exceed \$35,000.00 as allowed by the statutory exemption and will pay to the Chapter 13 Trustee any remaining net proceeds.
13. That the presumptive fee for a Motion to Sell Real Property is \$450.00, the presumptive fee for a Motion to Sell Personal Property is \$250.00, and the presumptive fee for an Application for Employment of a Profession is \$250.00. Debtor's counsel believes that \$700.00 is the reasonable value of the services provided and to be provided by the undersigned attorney for counseling the Debtor concerning the proposed sale, gathering information necessary to draft this application, drafting and processing this motion and the proposed order, interfacing with real estate agents, the purchasers and the closing attorney for the purpose of answering questions and concerns regarding the effect of the bankruptcy on the sale, extra follow-up

to make sure that the ensuing order is obtained and transmitted to the closing attorney in a timely fashion to avoid delaying unnecessarily the projected closing of title. It is anticipated, based on many past experiences, that it will take at least 4 hours of attorney time to attend to said details. The also takes into account the **substantial risk** inherent in all real estate sales situations that undersigned attorney will perform these services and not get paid because, for one reason or another, the sale falls through.

**WHEREFORE**, the Debtor respectfully prays that the Court allow the said sale of the subject real and personal property, allow the employment of NC Real Auctions, approve payment of the attorney fee through the Debtor's Chapter 13 plan , and grant such other and further relief as to this Court seems just and proper.

Dated: June 3, 2010

**LAW OFFICES OF JOHN T. ORCUTT, P.C.**

/s Edward Boltz  
Edward Boltz  
N.C. State Bar No.:23003  
1738-D Hillandale Rd.  
Durham, N.C. 27705  
(919) 286-1695

(Wagoner, Robin Motion for Acution.wpd rev. May 19, 2010)

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**CERTIFICATE OF SERVICE**

I, Renee Nolte, of the Law Offices of John T. Orcutt, P.C., certify, under penalty of perjury, that I am, and at all times hereinafter mentioned was, more than eighteen (18) years of age, and that on June 3, 2010, I served copies of the **MOTION FOR AUTHORITY TO SELL AT AUCTION REAL AND PERSONAL PROPERTY AND TO EMPLOY AUCTIONEER**, electronically or when unable by regular U.S. mail, upon the following parties (names and addresses):

Richard M. Hutson, II  
Chapter 13 Trustee  
Post Office Box 3613  
Durham, NC 27702

Ron Daniels  
**Realtor**  
Nc Real Auctions  
1000 Fate Washignton Rd.  
Stem, NC 27581-9647

Michael West  
Bankruptcy Administrator  
Post Office Box 1828  
Greensboro, NC 27402

Rebecca Leigh  
Attorney for Sun Trust Bank

Robin Wagoner  
5509 Old Hillsborough Rd  
Durham, North Carolina 27705

All creditors with duly filed claims as indicated on the Trustee's Report of Filed Claims.

/s Renee Nolte  
Renee Nolte